

Members

Rep. Phil Hoy, Chairperson
Rep. Linda Lawson
Rep. Kathy Richardson
Rep. Eric Koch
Sen. Richard Bray, Vice-Chairperson
Sen. Joseph Zakas
Sen. John Broden
Sen. Timothy Lanane
Chief Justice Randall Shepard
Thomas Felts
David Whicker
Bill Overdeer
Ludy Watkins



COMMISSION ON COURTS

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MEETING MINUTES¹

Meeting Date: October 15, 2007
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. Phil Hoy, Chairperson; Rep. Linda Lawson; Rep. Kathy Richardson; Rep. Eric Koch; Sen. Richard Bray, Vice-Chairperson; Sen. Joseph Zakas; Sen. John Broden; Sen. Timothy Lanane; Justice Brent Dickson (for Chief Justice Randall Shepard); Thomas Felts; David Whicker; Ludy Watkins.

Members Absent: Bill Overdeer.

Rep. Phil Hoy, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:07 P.M.

The first person to testify was Judge Stanley Levine of the Allen Superior Court concerning allowing magistrates to enter final orders or judgments in proceedings involving small claims and concerning certain protective orders. (Currently only magistrates in Allen County and St. Joseph County have these powers.)

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Judge Levine said allowing magistrates in Allen County to perform these duties had worked well. He stated approximately 27,000 new small claims cases were filed in Allen County in 2006. He said the courts there could not operate without the magistrates performing these functions.

Judge Levine then introduced Magistrate Jennifer DeGroote from Allen County. Ms. DeGroote stated that, in addition to the 27,000 small claims cases, approximately 3,000 orders for protection were issued in Allen County last year. She said she could not imagine how the Court could serve the number of people it does every year without the magistrates exercising these powers.

In response to questions from Commission members, Ms. DeGroote said appeals of final decisions made by magistrates in these cases go directly to the Indiana Court of Appeals. Judge Levine stated that, since he began serving on the Court in 1999, he was not aware of any person wanting an elected judge to hear a case instead of a magistrate.

Rep. Hoy then read a statement sent via electronic mail to the Commission by Judge John Marnocha of St. Joseph County. Rep. Hoy said the statement reads, "I believe I speak for the entire St. Joseph Superior Court when I say that the additional powers granted our magistrates to enter final judgments and orders has worked well. It is particularly important to litigants that they have a final decision at the time that it is made, rather than waiting for a judge to approve the recommendation of the magistrate. It has also alleviated judges from the time it takes to review the orders [which] in a high volume court such as ours is crucial. In fact, I would like to see the powers increased so that our magistrates could issue final orders and judgments in the misdemeanor cases which they are assigned."

After a brief Commission discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend allowing magistrates statewide to enter final orders or judgments in proceedings involving the small claims docket or protective orders to prevent domestic or family violence.

The next person to testify was Lilia Judson, Executive Director of the Indiana Supreme Court Division of State Court Administration (Division), concerning Trial Rule 60.5. (Trial Rule 60.5 allows trial courts to "order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions.")

Ms. Judson distributed information to the Commission listing orders for mandated funds from 2004 through 2006 (Handout #1). She stated the vast majority of court mandated expenditures during that time had gone for pauper and indigent defense expenses, psychological and medical examinations, and the payment of special prosecutors.

Ms. Judson continued by stating the Division could find only five instances from 2004 to 2006 involving mandated court staff salaries. She stated that the Indiana Supreme Court handed down two cases in late September 2007 from Clark County and Montgomery County involving mandated funds and staff salaries. She said these cases indicate how the Supreme Court will continue to deal with local disputes concerning mandates.

(The Clark County case may be found at <http://www.in.gov/judiciary/opinions/pdf/09260701fsj.pdf>. The Montgomery County case may be found at <http://www.in.gov/judiciary/opinions/pdf/09260702fsj.pdf>.)

Sen. Bray, Vice Chairperson of the Commission, stated he believed Trial Rule 60.5 had worked well with only one abuse of discretion of which he was aware. He said that since

the Supreme Court had recently dealt with this issue, he did not think it was necessary for the Commission to do anything further at this time. Rep. Hoy said he concurred with Sen. Bray and that this issue should continue to be worked out in the court system.

The Commission then considered requests for new judicial officers that were presented to the Commission at its October 1, 2007, meeting. (The Division's Indiana Trial Courts 2006 Weighted Caseload Report (WCR) referred to below may be found at <http://www.in.gov/judiciary/admin/courtmgmt/wcm/index.html>.)

The Commission first considered the request from Delaware County for one magistrate. In response to questions from Commission members, Ms. Judson stated that when the severity of need for judicial officers had initially been calculated by the Division for Delaware County, the number of full-time commissioners employed by the Delaware courts had been reported at 1.5. She stated this number should actually have been set at three. She said because of this, Delaware County's severity of need had been recalculated and the county was now ranked 64th among the counties by severity of need instead of 44th.

After a brief Commission discussion, no motion was made concerning this request.

The Commission then considered the request from Franklin County for adding a second judge in the county and abolishing the magistrate position that the Franklin Circuit Court received in 2007. Rep. Hoy stated that Franklin County was ranked 16th in the WCR by severity of need. After a brief Commission discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend adding a second judge to the Franklin Circuit Court and abolishing the Circuit Court magistrate position.

The Commission then considered the request from Madison County to convert the two judges of the Madison County Court into judges of the Madison Superior Court. Sen. Lanane stated Madison County would soon have the only county court in the state. After a brief Commission discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend converting the two judges of the Madison County Court into the fourth and fifth judges of the Madison Superior Court.

Rep. Hoy then stated he had been contacted by representatives from Marion County and the request for magistrates for the Marion Superior Court presented at the last Commission meeting had been withdrawn.

The Commission then considered the request from Miami County to add a second judge to the Superior Court. Rep. Hoy said Miami County was ranked 18th in the WCR. After a brief Commission discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend adding a second judge to the Miami Superior Court.

The Commission then considered the request from Switzerland County to abolish the Jefferson-Switzerland Circuit Court, create a new judicial circuit for Switzerland County, abolish the Ohio-Switzerland Superior Court, and create a magistrate position for the Dearborn-Ohio Circuit Court. Rep. Hoy stated Switzerland County was currently ranked 13th in the WCR.

In response to questions from Commission members, Monica Hensley, Deputy Prosecuting Attorney for Switzerland County and President of the Switzerland County Bar Association, distributed a packet of information concerning the court systems in Dearborn, Jefferson, Ohio, and Switzerland Counties and a letter from Judge Ted Todd of the

Jefferson-Switzerland Circuit Court supporting the creation of the new judicial circuit (Handout #2).

In response to questions from Commission members, Judge James Humphrey of the Dearborn-Ohio Circuit Court stated that Ohio County currently does not need a "stand alone court." Dillon Dorrell from the Ohio County Council added that Ohio County currently could not afford a stand alone court.

After a brief discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend abolishing the Jefferson-Switzerland Circuit Court with Jefferson County retaining the current joint circuit court judge in its own judicial circuit, creating a new judicial circuit for Switzerland County, abolishing the Ohio-Switzerland Superior Court, and creating a new magistrate position for the Dearborn-Ohio Circuit Court.

Sen. Zakas and Sen. Broden then discussed a request from Judge Peter Nemeth of the St. Joseph Probate Court to create two new general magistrate positions paid entirely by the state for his court to replace two juvenile magistrate positions in his court that are paid in part by the state and in part by St. Joseph County.

After a brief discussion, the Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to recommend creating two new general magistrate positions for the St. Joseph Probate Court to replace two juvenile magistrate positions in the Court.

Rep. Hoy then asked that the Commission approve the 2007 Final Report of the Commission, which includes a summary of the work program of the Commission during the 2007 interim plus recommendations made by the Commission. The Commission voted 11 to 0 by show of hands (with Justice Dickson abstaining) to approve the 2007 Final Report.

Rep. Hoy adjourned the meeting at 2:19 P.M.